

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6304

KENNETH F. WINSTON,

Petitioner - Appellant,

versus

GENE M. JOHNSON,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. David G. Lowe, Magistrate District Judge. (CA-04-337)

Submitted: July 27, 2005

Decided: August 3, 2005

Before KING, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kenneth F. Winston, Appellant Pro Se. Kathleen Beatty Martin, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Kenneth F. Winston, a state prisoner, seeks to appeal the magistrate judge's order* denying relief on his 28 U.S.C. § 2254 (2000) petition. This order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1); see Reid v. Angelone, 369 F.3d 363, 368-69, 374 n.7 (4th Cir. 2004). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of his constitutional claims is debatable and that any dispositive procedural findings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Winston has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument, because the facts and legal contentions are

*The case was decided by a magistrate judge with the parties' consent. See 28 U.S.C. § 636(c) (2000).

adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED